



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 18, 2013

Mr. Timothy E. Bray  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2013-12388

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 494880.

The Texas Department of State Health Services (the "department") received a request for the call listings of two named employees for seven specified months and the public access option forms for two named employees. The department released most of the information responsive to the request. However, as permitted by section 552.136(c) of the Government Code, the department redacted certain account numbers it determined to be subject to section 552.136(b) of the Government Code without requesting a decision from this office. Gov't Code § 552.136(c). Pursuant to section 552.136(d), the requestor has asked this office to review the account information and render a decision as to whether this information is excepted from disclosure under section 552.136. We have considered the department's position and reviewed the redacted information.

Section 552.136 of the Government Code provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The department claims the employee identification numbers are access devices subject to section 552.136 of the Government Code because they can be used to access employee financial and beneficiary information contained in the department's Centralized Accounting and Payroll/Personnel System. Based on your representations and our review, we agree the marked employee identification numbers are access devices subject to section 552.136. The department also seeks to withhold the marked telephone account numbers under section 552.136. The requestor argues that these account numbers cannot be withheld because section 552.136 only applies to charging devices. However, this office has found that telephone and utility account numbers in conjunction with another access device can be used to obtain goods and services. Accordingly, we find that the marked telephone account numbers are access devices subject to section 552.136. Therefore, the department must withhold the marked employee identification numbers and telephone account numbers under section 552.136 of the Government Code.

You have also withheld employee dates of birth from the information provided to the requestor. This office is not aware of any provision of law that authorizes the department to withhold an employee's date of birth without seeking a ruling from this office. Furthermore, you do not assert and our records do not indicate that the department has been issued a previous determination that allows it to withhold a date of birth without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001) (outlining criteria for second type of previous determination issued by attorney general). Accordingly, the department was required to request a ruling to withhold the employees' dates of birth pursuant to section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Failure to request a ruling as prescribed by section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797

S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.102 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). We agree the department must withhold the employees’ dates of birth, which we marked, under section 552.102(a) of the Government Code.

In summary, the department must withhold the marked employee identification numbers and telephone account numbers under section 552.136 of the Government Code. The department must also withhold the employee dates of birth we marked under section 552.102(a) of the Government Code. The remaining information must be released.<sup>1</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>1</sup>The employee election forms contain social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b). We also note that the employees elected to withhold their social security numbers in accordance with section 552.024 of the Government Code. Accordingly, the department was authorized to withhold these social security numbers under section 552.117(a)(1). *See id.* §§ 552.024(c) (authorizing governmental body to redact, without necessity of requesting decision, social security number of a current or former employee who properly elected to keep information confidential), 117(a)(1) (excepting from disclosure home addresses and telephone numbers, social security number, emergency contact information, and family member information of current or former employees who properly elect under section 552.024).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tamara R. Wilcox', with a stylized, cursive script.

Tamara R. Wilcox  
Assistant Attorney General  
Open Records Division

TRW/bhf

Ref: ID# 494880

Enc. Submitted documents

c: Requestor  
(w/o enclosures)